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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,170	04/26/2001	Thue M. Pontoppidan	10559-366001 / P10172	8597
20985	7590	07/26/2005		
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			EXAMINER PATEL, ASHOKKUMAR B	
			ART UNIT 2154	PAPER NUMBER

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/843,170

Applicant(s)

PONTOPPIDAN ET AL.

Examiner

Ashok B. Patel

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation Sheet (PTOL-303):

Applicant's argument:

The previously submitted declaration and evidence of conception and diligence is allegedly insufficient because (1) the declaration was not signed by all inventors, (2) the submitted evidence allegedly fails to establish diligence, and (3) the affidavit of Thue M. Pontoppidan allegedly fails to support continued diligence. Applicant objects to this rejection of the declaration submitted under 37 CFR 1.131 because the second inventor, Esben Carlsen, cannot be located.

Examiner's response:

1. The declaration filed on 11/22/04 under 37 CFR 1.131 has been considered but is ineffective to overcome the Larson reference (Larson et al. 2003/0069848 A1) and the Or reference (Or et al. 2002/0067742 A1).
2. The declaration is insufficient to establish conception of the invention because it was not signed by all inventors of the claimed subject matter. Statements 1 and 2 of the declaration signed only by Thue M. Pontoppidan declare that Esben Carlsen is a coinventor of the claimed subject matter. No separate declaration or affidavit signed by Esben Carlsen was presented. MPEP 715.04 requires that all inventors of the subject matter must sign a declaration submitted under 37 CFR 1.131, unless it is established that less than all named inventors invented the claimed subject matter.
3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Larson reference (Larson et al. 2003/0069848 A1) and the Or reference (Or et al. 2002/0067742 A1) reference to either a constructive reduction to practice or an actual reduction to practice.
4. The affidavit of Thue M. Pontoppidan alleges that diligence to reduce the invention to practice commenced at least as early as July 5, 2000, but there is no allegation or evidence offered that such diligence continued until the invention was actually reduced to practice or until the filing of the application on April 26, 2001.
5. The examiner maintains the rejections under 35 USC 102 and 35 USC 103(a) cited in the previous office action.

Applicant's argument:

The art of record fails to teach or suggest the amended claims. Attention is called to Larson at paragraphs 138-139., where it is noted that one may want to implement various gateway restrictions.

Examiner's response:

New issues requiring further consideration is a "WAP device manager resident on a WAP gateway.